

AMENDED IN ASSEMBLY JANUARY 3, 2000

AMENDED IN ASSEMBLY APRIL 26, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

No. 1446

Introduced by Assembly Member Granlund

February 26, 1999

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An act to add Section ~~2753 to the Labor~~ 65850.3 to the Government Code, relating to ~~labor~~ local government.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1446, as amended, Granlund. ~~Employer obligations: independent contractors~~ Strip clubs: licensure: local governmental regulation.

*Existing law authorizes the legislative body of any county or city to adopt ordinances to regulate, pursuant to a content neutral zoning ordinance, the time, place, and manner of operation of a sexually oriented business, as specified.*

*This bill would specifically require the legislative body of any county or city to adopt ordinances requiring licensure of sex-oriented cabarets, defined to include strip clubs.*

*By requiring that licensure the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do*

*not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law provides that the contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a 3rd person. Existing law imposes certain obligations on those persons or entities who are employers or employees. Existing law creates the Industrial Welfare Commission and delegates to it the authority to establish the wages, hours, and conditions of employment of employees.~~

~~This bill would provide, for purposes of the statutory provisions that impose obligations on employers and employees and those provisions that govern the authority of the commission over employees, that a conclusive presumption exists that a person who performs services of an artistic nature, such as acting, singing, or dancing, is an independent contractor and not an employee if certain conditions exist. The bill would provide, whenever a business establishment imposes a minimum age requirement for performing artistic services in the business establishment, that no law prevents the business establishment from requiring either an independent contractor or an employee to provide identification showing his or her age before performing artistic services in a business establishment.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. It is the intent of the Legislature in~~
- 2 ~~enacting this act to clarify status, rights, and obligations,~~
- 3 ~~with respect to payment of taxes and other matters, for~~
- 4 ~~persons providing live entertainment in business~~
- 5 ~~establishments and with respect to minors providing live~~

~~entertainment in business establishments that are subject to minimum age requirements.~~

~~SEC. 2. Section 2753 is added to the Labor Code, to read:~~

~~2753. (a) For purposes of this division and Part 4 (commencing with Section 1171) of Division 2, there is a conclusive presumption that a person is working as an independent contractor and not as an employee if all of the following conditions exist:~~

~~(1) A contract is voluntarily executed between the parties that acknowledges the status of the person as an independent contractor, states that the person is not entitled to the payment of any wages, and contains provisions limiting the term of the contract to a definite period of time.~~

~~(2) The person performs services of an artistic nature, such as acting, singing, or dancing.~~

~~(3) The person possesses a business license to perform those services, if required by any governmental entity.~~

~~(4) The person is not required to pay any owner or operator of a business establishment any amounts received by the person as tips or other gratuities directly from the patrons, guests, or members of the business establishment.~~

~~(b) Whenever a business establishment imposes a minimum age requirement for performing artistic services in the business establishment, nothing in this section or any other law prevents the business establishment from requiring either an independent contractor or an employee to provide identification showing his or her age before performing services of an artistic nature in the business establishment.~~

~~SECTION 1. Section 65850.3 is added to the Government Code, to read:~~

~~65850.3. (a) In addition to the powers conferred pursuant to subdivision (g) of Section 65850, the legislative body of any county or city shall, pursuant to this chapter, adopt ordinances that require licensure of sex-oriented cabarets. As used in this section, a "sex-oriented cabaret" means a strip club, gentlemen's~~

1 club, juice bar, night club, bar, restaurant, or similar  
2 establishment or concern that features any type of live  
3 entertainment characterized by its emphasis on matter  
4 depicting, describing, or relating to specified sexual  
5 activities or specified anatomical parts.

6 (b) Any ordinance adopted pursuant to this section  
7 shall require a background check of any person who is  
8 working, either as an employee or independent  
9 contractor, in a sex-oriented and cabaret and who is  
10 engaged in performing striptease, in the removal of  
11 clothing, or in the wearing of transparent or diaphanous  
12 clothing, including modeling lingerie, to the point that  
13 specified anatomical parts are exposed.

14 (c) Any ordinance adopted pursuant to this section  
15 shall, in order to prohibit employment of persons  
16 convicted of any drug, prostitution, or other relevant  
17 crime as may be specified by the ordinance and in order  
18 to establish an application process for the hiring of  
19 employees, require local law enforcement authorities to  
20 investigate any information contained in any  
21 employment application by any person desiring to work,  
22 whether as an employee or independent contractor, in a  
23 sex-oriented cabaret.

24 (d) As used in this section, “specified anatomical  
25 parts” means:

26 (1) Less than completely and opaquely covered  
27 human genitals; pubic hair; cleft of the buttocks;  
28 perineum; anal region; pubic hair region; or female breast  
29 below a point immediately above the top of the areola.

30 (2) A penis in a discernably turgid state, even if  
31 completely and opaquely covered.

32 (e) As used in this section, “specified sexual activities”  
33 means:

34 (1) Actual or simulated: sexual intercourse, oral  
35 copulation, anal intercourse, oral anal copulation,  
36 bestiality, masturbation, direct physical stimulation of  
37 clothed or unclothed genitals, flagellation or torture in a  
38 sexual context, or the use of excretory function in a sexual  
39 context; or any of the following depicted sexually  
40 oriented acts or conduct, whether actual or simulated:

1 *anilingus, buggery, coprophagy, coprophilia, cunnilingus,*  
2 *fellatio, necrophilia, pederasty, pedophilia, sapphism,*  
3 *urophilia, zooerastia, zoophilia.*

4 (2) *Clearly depicted human genitals in a state of sexual*  
5 *stimulation, arousal, or tumescence.*

6 (3) *Use of human or animal ejaculation.*

7 (4) *Fondling or erotic or sexually oriented touching of*  
8 *human genitals, pubic region, buttocks, cleft of the*  
9 *buttocks, anal region, or female breast.*

10 (5) *Masochism, erotic or sexually oriented torture,*  
11 *beating or the infliction of pain.*

12 (6) *Erotic or lewd touching, fondling, or other sexually*  
13 *oriented contact with an animal by a human being.*

14 (7) *Human excretion, urination, menstruation,*  
15 *vaginal or anal irrigation.*

16 (8) *Striptease, or the removal of clothing, or the*  
17 *wearing of transparent or diaphanous clothing, including*  
18 *models appearing in lingerie, to the point where specified*  
19 *anatomical parts are exposed.*

20 SEC. 2. *Notwithstanding Section 17610 of the*  
21 *Government Code, if the Commission on State Mandates*  
22 *determines that this act contains costs mandated by the*  
23 *state, reimbursement to local agencies and school*  
24 *districts for those costs shall be made pursuant to Part 7*  
25 *(commencing with Section 17500) of Division 4 of Title*  
26 *2 of the Government Code. If the statewide cost of the*  
27 *claim for reimbursement does not exceed one million*  
28 *dollars (\$1,000,000), reimbursement shall be made from*  
29 *the State Mandates Claims Fund.*